

1 A Yes.

2 Q You started in the business when?

3 A Around 1976.

4 Q Could you describe your business operations for
5 me, please?

6 A I'm a two-way radio dealer. I sell two-way
7 radios, service the radios. I operate a number of
8 repeaters, provide customers with repeater service. I
9 maintain other customers' repeaters, install other
10 customers' repeaters and do consulting.

11 Q When you say you install other customers'
12 repeaters, are these customers who have in-house systems or
13 are these other commercial operators?

14 A Both in-house systems for themselves and also
15 providers of repeater service, just like myself.

16 Q So, you provide installation and maintenance
17 service for other SMRs who might essentially be competitors
18 of yours?

19 A Yes.

20 Q Now, describe for me the provision of repeater
21 service? Can you distinguish between being a dealer versus
22 providing repeater service? Can you explain those two
23 functions?

24 A I act as like a common carrier or a carrier who
25 provides an element of communications facilities to people

1 who own their own radios, usually. With repeater service,
2 they are able to talk longer distances using their radios.
3 I provide, in essence, a service like the phone company
4 connects your telephone their assistance, you can call
5 somebody else.

6 Q When you say they own their own radios, you're
7 referring at that point to their mobile unit, correct?

8 A Yes.

9 Q Now, you said you provide repeater service. Did
10 you provide repeater service prior to the early 1990s?

11 A Yes.

12 Q In what frequency band?

13 A On a UHF band, 407, 460 and 470 frequencies.

14 Q And, approximately how long have you been doing
15 that?

16 A Since 1976.

17 Q Now, in that particular aspect of your business,
18 your repeater service on UHF, is that business related in
19 any way to Mr. Kay?

20 A Yes.

21 Q In what way?

22 A Well, he's a friendly competitor from that point
23 of view. He does the same exact thing that I do. He has
24 repeaters, he sells radios, provides services on radios,
25 provides services to other companies.

1 Q But, does he have any involvement in your UHF
2 repeater business?

3 A No, except for I lease some space from him.

4 Q Well, tell me about the space you lease?

5 A On several of my sites, I lease space from him.
6 He's landlord.

7 Q Do you lease it or do you sublease it, or what?

8 A I lease it in one and sublease it in other
9 situations.

10 Q When you say you lease space, is this at the
11 actual repeater or transmitter site?

12 A Yes, this is off of the mountaintop.

13 Q I want you to describe for the record a typical
14 mountaintop or repeater site?

15 A Basically, it is a shed -- it could be block or
16 steel, cargo-type container. Some of the buildings can be
17 1,200, 1,500 square feet. Some of them are very small.
18 There's a tower antennae structure usually next to the
19 building to replace the antennas.

20 Q What's inside the building? If I went inside one
21 of these buildings, what would I see?

22 A Equipment racks, cabinets, open racks, lots of
23 cabling and wire.

24 Q Now, what's a typical repeater installation look
25 like? I mean, if I'm looking at one of your repeaters and I

1 went to this site, what would I look at?

2 A Transceiver piece of equipment, size 19 inch wide,
3 maybe anything from eight inches to maybe 20, 25 inches
4 tall. It would have the transmitter and receiver,
5 associated electronic equipment to operate the repeater and
6 power supplies and antennae filtering equipment.

7 Q How many repeaters might one find at a typical
8 structure such as this?

9 A Smaller building, it might only have five or ten
10 repeaters. Larger ones could have more than 100.

11 Q Would this all be one licensee or multiple
12 licensees?

13 A Multiple licensees.

14 Q Licensees in the same bands, different bands or
15 what?

16 A All sorts of bands, including microwaves and the
17 whole spectrum.

18 Q Do SMR operators, different SMR operators,
19 frequently place the repeaters at the same location?

20 A Yes.

21 Q Even ones who are competitors of one another?

22 A That's a common practice.

23 Q Is it a common practice for one to sublease space
24 from another?

25 A Yes, it's common, also.

1 Q Okay, so you said since the 1970s, mid-1970s, you
2 were operating UHF repeaters, and then your testimony at
3 page 73 is that you became interested in the 800 MHz service
4 in the early 1990s. What prompted your interest in 800 MHz?

5 A I was looking to expand my business. I was
6 familiar with Mr. Kay's operations. He was successful in
7 providing the 800 MHz computer service and I approached him
8 about obtaining licenses in the 800 MHz channel.

9 Q Let's back up a moment. You mentioned that you
10 were aware of Mr. Kay. How long have you known Mr. Kay?

11 A Since '75, maybe.

12 Q Do you have any knowledge as to how he became
13 involved in the repeater business?

14 A I introduced him to it.

15 Q So, you were already in the business before him?

16 A Yes, yes.

17 Q But, now, by the 1990s, what, he had surpassed you
18 or what?

19 A Yes, he did.

20 Q So, you say you were aware of Mr. Kay and I
21 believe you testified in this transcript that you approached
22 Mr. Kay for his assistance in obtaining these licenses?

23 A Yes.

24 Q Why is that?

25 A Well, he was already successful in it. He had the

1 knowledge and expertise. There were some differences
2 between the UHF licensing and the 800 licensing, a different
3 set of rules. And, he was a friend of mine and I trusted
4 his help and judgment.

5 Q What is it specifically that he did for you in
6 this regard?

7 A He helped me locate frequencies. He had access to
8 the institute database. He would find a number of channels
9 that might be licensable and then we would talk about the
10 particulars of the frequency, what repeaters, what sites
11 might become available or were available for licensing, who
12 else was on the frequency, how many radios were already
13 licensed on the channel, how busy the channel was.

14 Q Well, you discussed these matters with Mr. Kay?

15 A Of course.

16 Q Then, what would happen?

17 A Well, then I asked him to write the application
18 up. He had some specialized software that was capable of,
19 through a computer, of printing up an application. He was
20 familiar with the licensing process. He had the information
21 already stored in his computer for the sites, so he wrote
22 the applications up for me, prepared them.

23 Q Now, before he prepared these applications, did
24 you always accept the recommendations that he made to you
25 regarding the frequencies to be applied for?

1 A No.

2 Q So, you're saying there are situations in which
3 you specifically modified, declined, rejected or what?

4 A There were a number of times that the frequencies
5 had, how do I say, more unfriendly competitors on them and I
6 wished not to go head to head with an unfriendly competitor.
7 It was simpler to go on a frequency that I was familiar with
8 the people on there, and knew that my system would be more -
9 - it would work well with other companies.

10 Sometimes there were a very small number of mobile
11 radios available to be licensed and I felt that it wasn't
12 worth the time and effort to license the channel.

13 Q Now, you said you then had Mr. Kay prepare these
14 applications, using his computer software, correct?

15 A Correct.

16 Q Now, are you familiar with the application
17 process?

18 A Very familiar. I had --

19 Q Where does your familiarity come from?

20 A I did a lot of licensing. All the UHF licenses
21 that I had prior, I prepared. I prepared licenses for some
22 of my clients and I was reasonably good at doing it without
23 making mistakes.

24 Q So, what was your reason for relying on Mr. Kay's
25 assistance in this particular instance?

1 A Mostly, because he had a special software program
2 and it was easier.

3 Q I'm going to ask a series of questions now that
4 are going to be referring to applications that you filed for
5 800 MHz facilities that later became subject to the
6 management agreement. So, we're clear what group of things
7 we're talking about?

8 A Yes.

9 Q Okay. Who generally prepares those applications?

10 A Most of the time, Mr. Kay would.

11 Q On occasions when he didn't, who did?

12 A I would.

13 Q But, most of the time, it's your testimony that
14 Mr. Kay prepared the applications, correct?

15 A Yes.

16 Q When he prepared the application, what would he
17 then do with it?

18 A I would look it over, make sure it's correct.
19 Occasionally he spelled my name wrong, because I spell it
20 with a C instead of a K.

21 Q Okay.

22 A I'd just make sure it looked right as to what we
23 talked about and I would sign it.

24 Q Did Mr. Kay, to your knowledge, ever prepare a
25 file in your behalf, an application prior to your review and

1 approval?

2 A Never.

3 Q Did you always sign the application prior to his
4 filing them with the FCC, to your knowledge?

5 A Of course.

6 Q Is it unusual in this industry to have someone
7 other than the licensee or the applicant prepare an
8 application?

9 A No, it's not unusual. In fact, there's a lot of
10 people who prepare applications.

11 Q What type of people prepare applications?

12 A The frequency coordinators are an excellent
13 source. You can pay them -- it's a service that they
14 provide. There are a number of private companies, most of
15 them back here, that will prepare applications. I use a
16 company with one of my clients to do that.

17 There's a lot of people. Dealers will oftentimes
18 prepare an application so that the user doesn't make a lot
19 of mistakes, which is very common.

20 Q Now, I'm going to give the court reporter the
21 original of this and do you know what --

22 MR. SHAINIS: Yes, four.

23 MR. KELLER: I'd like to have this marked as Kay
24 Exhibit 4.

25 CHIEF JUDGE CHACHKIN: Thank you.

1 MR. KELLER: Sorry, I forgot Mr. Sobel. This is a
2 one sheet document, but it is two-sided. The court reporter
3 has the actual original, which you can keep for reference.

4 CHIEF JUDGE CHACHKIN: All right, a document which
5 has at the top of the page, the first side, Federal
6 Licensing Publication for Business will be marked for
7 identification as Kay Exhibit 4.

8 (The document referred to was
9 marked for identification as
10 Kay Exhibit 4.)

11 BY MR. KELLER:

12 Q Mr. Sobel, do you recognize this document?

13 A Yes.

14 0 What is it?

15 A This is an independent company. It's not
16 affiliated with the Government, although it says Federal
17 Licensing, Inc. This is one of those application companies
18 that -- this particular company is very aggressive in
19 sending this form out to licensees.

20 Basically, if you read it, it says that if it's
21 all correct, then send them money and they will renew your
22 license for you. They will also provide full licensing
23 services for you, too.

24 Q Now, I obtained the original of this document from
25 you, correct?

1 A Yes.

2 Q How did you receive this document?

3 A This is one of my licenses that's due to expire
4 the end of '99, towards the end of '99, and this was sent to
5 me by this company in an effort to get my business.

6 Q Do you have personal knowledge regarding the
7 various services offered by this company?

8 A Some of the services, yes.

9 Q Do you know whether they do applications other
10 than the new applications?

11 A They will do the entire FCC filing.

12 Q Well, if you wanted an initial application, they
13 would file the application for you?

14 A Yes.

15 Q What would that procedure involve, then, if they
16 did that?

17 MR. SCHAUBLE: Your Honor, at this point, we
18 object on the basis of relevance.

19 CHIEF JUDGE CHACHKIN: This is one of the matters
20 you've raised, the fact that Mr. Kay prepared the
21 application for Mr. Sobel.

22 MR. KELLER: You even asked that all the
23 applications be entered into evidence, and we've included
24 transcript portions here about Mr. Kay's involvement in
25 preparing the application for Mr. Sobel.

1 CHIEF JUDGE CHACHKIN: Seeing that is not
2 important?

3 MR. SCHAUBLE: Seeing, Your Honor, unless this
4 company was actually involved in somehow, I would see the
5 relevance of that.

6 CHIEF JUDGE CHACHKIN: There is a company
7 available, apparently, that does the same thing that Mr. Kay
8 did for Mr. Sobel.

9 MR. KNOWLES-KELLETT: I think it was established
10 at this point --

11 CHIEF JUDGE CHACHKIN: Well, that's what the
12 questions are aimed at. Overruled.

13 MR. KELLER: I think, was there a question
14 pending?

15 CHIEF JUDGE CHACHKIN: I think the question
16 concerned the nature --

17 BY MR. KELLER:

18 Q Well, what would the procedure be if they prepared
19 an application for you? How would it differ from the
20 service that Mr. Kay performed?

21 A It wouldn't differ very much. You would still
22 have to provide them the information and what frequency you
23 wanted your license on. They would need all the
24 information, the specifics, the main address, what is the
25 specific information. They would just prepare the form.

1 Q Now, you mentioned before that sometimes you can
2 use a frequency coordinator to prepare an application for
3 you, is that correct?

4 A Yes.

5 Q Will the frequency coordinators in that process
6 also assist you in locating channels?

7 A Yeah, that's the primary purpose of that is to
8 locate a frequency. That's why they call them a coordinator
9 -- to best manage the spectrum.

10 Q Now, Mr. Sobel, for a moment, I would like you to
11 turn please to Exhibit 331, please. Now, you testified
12 earlier, both in the previous proceeding of the transcript
13 we have here and also, earlier, in response to Mr.
14 Schauble's questioning, that these are various applications
15 for 800 MHz stations, prepared in your name, stations that
16 later became subject to the management agreement, correct?

17 A Yes, that's correct.

18 Q And, I'd like you to refer to the first of these,
19 page one of 30, of this exhibit. Now, under the licensee
20 name, below that there's information calling for the address
21 of the licensee. Do you see that?

22 A Yes.

23 Q What address is entered there?

24 A It's my address, my home office address.

25 Q Your home office address? There's also

1 information listed to the left of that for contacting
2 control points. What address is listed there?

3 A That's my home office address, and I must note
4 that this is an old address, since I've moved.

5 Q You've since moved, okay, but this, at the time,
6 was your home office address?

7 A Yes.

8 Q So, did you ever receive correspondence from the
9 FCC in response to any of the applications you filed?

10 A Yes.

11 Q Where did that correspondence go?

12 A It would come to my home office address.

13 Q Would Mr. Kay have access to that home office?

14 A No.

15 Q Would Mr. Kay have any way of knowing that you'd
16 received such correspondence, unless you told him?

17 A Eventually, it shows up on the FCC database, but
18 no, otherwise not.

19 Q What is a control point?

20 A It's -- well, they call it contact points and
21 control points. Theoretically, it's the locations where you
22 have control over your station. It's a point where you keep
23 your records, it's a point where they can reach you, should
24 there be a problem, or need to reach you.

25 Q What is the meaning of a licensed control point?

1 A Then you're allowed to actually transmit from that
2 location, rather than just being an office.

3 Q Now, it's true that in these applications, you
4 specified your home address as not only a contact point, but
5 also a control point, correct?

6 A That's correct. I could also transmit --

7 Q And, do you know, when the licenses were
8 subsequently issued, did they include in the authorization a
9 control point?

10 A Yes.

11 Q And, was that also your home address?

12 A Yes.

13 Q Did you maintain actual control transmitter
14 facilities at your home address?

15 A Yes.

16 Q I now want to turn your attention to the
17 transcripts, so now we're back on exhibit, whatever number
18 that was. I'm not going to say it again, but page 103 of
19 the transcript.

20 MR. SCHAUBLE: Let the record reflect it's Exhibit
21 328.

22 MR. KELLER: Thank you very much. I appreciate
23 that.

24 BY MR. KELLER:

25 Q Mr. Sobel, I want to refer your attention to lines

1 four through eight. The question was, I assume this is Mr.
2 Schauble's question, but I'm not sure, "Now around the time
3 the first management agreement stations were being
4 constructed in the early 1990s, you and Mr. Kay had a
5 discussion about providing further assistance to you,
6 correct?" And, your answer was, "Yes."

7 My question is, do you have a more specific
8 understanding as to the sequence of events there?

9 A Well, first I asked him to find me frequencies and
10 help me with the licensing of the channels, which he did so.
11 And, some months later, I received my first license.

12 After that, we talked about what and how I could
13 put the stations on the air and we came across an idea that
14 he could provide the equipment to me. I would install the
15 stations. He would provide a reselling service and load the
16 system with customers, and we would split the revenues after
17 \$600.

18 Q Now, when you say after \$600, does that mean,
19 explain that, please?

20 A Well, clearly, stations cost some money, to pay
21 for rent, insurance, miscellaneous fees, cost of
22 maintenance, all the things associated with the stations,
23 and the first \$600 would be allocated to pay for this cost
24 and he would keep the first \$600. After that, we would
25 split the revenue 50/50.

1 Q Now, why did you make that particular arrangement
2 with Mr. Kay?

3 A Well, the stations cost between \$6,000 and \$7,000.
4 I could have borrowed the money or used my credit, if I had
5 it available, but his offer to put the stations up at his
6 expense and then split the revenue after \$600 was a real
7 good deal for me. It saved me from having to invest. It
8 also saved me from having to pay an additional interest
9 cost, due to using credit.

10 It was just, it was a real good deal for me and
11 assured me some income down the road.

12 Q Did you have a further understanding with Mr. Kay
13 regarding installation, maintenance, repair, upkeep of these
14 stations?

15 A It was clear that I was to maintain them, install
16 them, manage the day to day operations of the technical side
17 of the equipment, as well as turning on a lot of customers.

18 Q Now, you --

19 CHIEF JUDGE CHACHKIN: You're making --

20 THE WITNESS: Just all the things necessary to
21 keep the stations operational.

22 BY MR. KELLER:

23 Q You already provided instruction in maintenance,
24 in terms of use for other licensees, including Mr. Kay,
25 correct?

1 A That's correct.

2 Q And, you charged an hourly rate for those?

3 A Yes.

4 Q So, what was your understanding regarding any
5 compensation for the work that you were performing in
6 installing and maintaining these particular systems?

7 A Well, since he was getting the first \$600, and
8 that was to be credited towards the maintenance and upkeep
9 of the system, he would also pay me for whatever work I did
10 on the systems. And, we agreed that that amount would be
11 the same that I would charge him for maintaining his
12 systems.

13 Q Now, you received this first license in the mail
14 from the FCC and, I assume, gradually started to receive
15 others. Now, you might have decided to just go and
16 construct these stations separately on your own, independent
17 of Mr. Kay, correct?

18 A I could have.

19 Q Now, if you had done that, can you run through for
20 me the financial and business structure that would then be
21 involved?

22 A Well, part of our agreement was that he was going
23 to load my systems. There was incentive for him to do that,
24 obviously, since he invested some effort into the stations.

25 If I were to put the stations up myself, then from

1 a friendly dealer point of view, he might assist me on
2 loading occasionally, but he was more interested, of course,
3 in loading his systems. So, I would have to find clients to
4 load my systems. It would have taken a longer time.

5 Q So, part of your reason for entering into this
6 arrangement with Mr. Kay was to, in effect, get access to
7 his loading of new customers or his revenue?

8 A Yes, he had several employees who were assigned to
9 sales. They had a service department and accounting
10 facilities, billing service, all those types of things that
11 a large organization has to pound the pavement, per se, to
12 find customers.

13 Q Your particular operation, Marc Sobel, d/b/a Air
14 Wave, how many employees did you have?

15 A I had no employees.

16 Q So, you're a solo businessman, correct?

17 A Yes.

18 Q The various operations you described earlier that
19 you were into being a dealer, operating your own UHF
20 repeaters, service maintaining, etc., how much time do you
21 spend on that? Is it a part-time job?

22 A No, it's a full-time job.

23 Q How many hours a week would you estimate that you
24 spend on that?

25 A Probably anywhere from 30 to 60, even 70 hours a

1 week, sometimes.

2 Q Would it have required additional time for you to
3 add to your responsibilities, going out and marketing 800
4 MHz repeater service?

5 A Yes.

6 Q Now, in addition, I want to come back to this
7 question, if you had built these repeaters on your own,
8 independent of Mr. Kay, you would have had to have what,
9 either purchased or leased the repeaters?

10 A That's correct.

11 Q And, I think you already testified that the cost
12 of a typical repeater is about \$7,000. Is it common in the
13 industry to lease equipment?

14 A I can't say it's real common, but it's often done.

15 Q And, what might be a typical monthly cost for
16 leasing a repeater?

17 A It depends. I would say at this point in time, it
18 would be \$200 to \$300 a month.

19 Q Okay, would that include anything other than the
20 equipment?

21 A Probably not.

22 Q Now, your arrangement with Mr. Kay also included
23 the site space, correct?

24 A That's right.

25 Q If you were doing this on your own, you would have

1 had to have laid out money for that?

2 A That's correct.

3 Q To who, the site owner or another tenant as a
4 sublessee?

5 A Yes.

6 Q Now, you leased space from Mr. Kay for some of
7 your UHF repeaters that are not subject to the management
8 agreement, correct?

9 A That's correct.

10 Q Do you pay him rent for those repeaters?

11 A Yes, I do.

12 Q And, that's an actual transfer? That's not an
13 understanding. You pay him on a monthly basis?

14 A I write him a check.

15 Q But, for the 800 MHz stations that are subject to
16 the repeater, your agreement is there is no check, it comes
17 out of the \$600, correct?

18 A That's the understanding.

19 (Pause.)

20 Q If you had built these repeaters on your own,
21 independent of Mr. Kay, how would you have handled the
22 installation, maintenance, repair and servicing?

23 A I would have done it myself. I couldn't pay
24 myself, but I would have done it. I would have compensated
25 through the revenue and the system.

1 Q But, under the arrangement you have with Mr. Kay,
2 you are compensated on an hourly basis?

3 A That's correct.

4 Q Was that part of your consideration agreement with
5 the \$600 deal?

6 A Actually, I made money upfront by my deal with Mr.
7 Kay, versus making money later with doing it myself.

8 Q Now, with all the work that you performed, I mean,
9 you charge a standard, hourly rate, correct?

10 A That's correct.

11 Q Now, these are services you perform obviously with
12 respect to your own stations, and also with respect to Mr.
13 Kay's stations. Are there others for whom you perform these
14 installation, maintenance, repair-type services?

15 A Yes.

16 Q I believe you testified in the previous proceeding
17 -- I think it may be reflected, in fact, I know it's
18 reflected in the transcript, so I won't burden this by
19 trying to exactly recreate that, that you have a special
20 rate or a discount rate which you give Mr. Kay, correct?

21 A Yes. Because we do a lot of business with Mr.
22 Kay, I give him a special rate.

23 Q Who establishes the hourly rate that you charge?

24 A I do, with Mr. Kay's approval, obviously.

25 Q Have you ever adjusted the rate, ever changed the

1 rate?

2 A Several times.

3 Q Raised it over time, I gather?

4 A Yes.

5 Q When you do that, what's the procedure? Do you
6 just normally notify your clients or do you sit down and
7 renegotiate with them?

8 A I just talk to him about it.

9 Q Mr. Sobel, please turn to page 117 --

10 CHIEF JUDGE CHACHKIN: Before we go onto that, is
11 this an appropriate time for a lunch recess? Or, do you
12 prefer to go longer? We can stop at one, I don't care.

13 MR. KELLER: I think this would be an appropriate
14 time, Your Honor, because that way, we can get back and I
15 should be able to finish before the 3 p.m. time.

16 CHIEF JUDGE CHACHKIN: So, we'll take an hour
17 lunch recess.

18 (Whereupon, at 12:30 p.m., the hearing was
19 recessed, to reconvene at 1:30 p.m. this same day, Monday,
20 January 11, 1999.)

21 //

22 //

23 //

24 //

25 //

1 MR. SHAINIS: Thank you.

2 MR. SCHAUBLE: That's it, Your Honor.

3 CHIEF JUDGE CHACHKIN: I'm waiting for Mr. Keller.
4 Proceed.

5 Whereupon,

6 MARC D. SOBEL

7 having been previously duly sworn, was recalled as a witness
8 herein, and was examined and testified further as follows:

9 CROSS-EXAMINATION (CON'T)

10 BY MR. KELLER:

11 Q Mr. Sobel, earlier this morning, we were
12 discussing rentals of site space, and you stated that at
13 some sites, you sublease space from Jim Kay, correct?

14 A That's correct.

15 Q Are there sites where you lease space from people
16 other than James Kay?

17 A Yes.

18 Q Are there sites where you lease space to Jim Kay?

19 A Yes.

20 Q You also, I know, testified that it was not
21 uncommon, in fact, it was quite common for land mobile
22 licensees in the L.A. area to share site space. I want you
23 to respond to why that is?

24 A There's a limited number of buildings on these
25 mountaintops. From an economy point of view, the building

1 owners want to fill their buildings up. It's very expensive
2 to have buildings on forestry property, so permits are
3 required. Very costly. So, you share space in these
4 buildings for the general good of the clients, essentially.

5 Q So, are there any particular advantages,
6 disadvantages, one way or the other, to you as the licensee
7 when you decide to share space with another licensee rather
8 than go out and lease a space of your own?

9 A In Mr. Kay's space, I share some of the same
10 cabinetry and antennas on towers. We join multiple
11 transmitters together into single antennas, so we don't have
12 to have a transmitter for each antennae, otherwise we'd have
13 a lot more antennas. So, from an economy point of view,
14 it's to a great advantage to share.

15 Q Now, how is it technically accomplished to have
16 two different transmitters share the same antennae?

17 A We use a filter system with cavities and they're
18 harmonica tuned to the frequencies and the signal goes
19 through the cams to guarantee and to keep each transmitter
20 from feeding back into the other transmitter.

21 Q So, the fact that two transmitters use the same
22 antennae or otherwise share some same physical components
23 does not necessarily imply that they're operating in concert
24 in terms of services?

25 A No, they're totally separate from each other in

1 every other respect. The other thing that we share
2 oftentimes is at the very top of the tower sometimes the
3 building owner will install a master receive system for the
4 antennae, similar to like a condominium complex providing
5 cable TV for everybody in the building. You have one
6 antennae. They split it for everybody who uses those
7 frequencies in the building.

8 Q Very well. I now want you to refer to WTB Exhibit
9 329. And, again, this is still the transcript from your
10 testimony under the other proceeding. Turn to transcript
11 page 117, please.

12 MR. KNOWLES-KELLETT: For the record, Your Honor,
13 it's Exhibit 328.

14 MR. KELLER: I keep doing that. I apologize.
15 Exhibit 328, page 117 of the transcript.

16 BY MR. KELLER:

17 Q In discussion, Mr. Sobel, I would just like you to
18 review for a moment your testimony starting at about line
19 20. There's a question there, "Do you monitor Mr. Kay's
20 stations yourself?" Answer, "Sometimes." "How often would
21 that happen?" "Probably about the same times I monitor my
22 own. I monitor the system as a whole."

23 My question is, first of all, what do you mean by
24 monitoring the system?

25 A Just monitor for two reasons. One, it's maybe

1 suspected that something is broken or not working properly.
 2 Every time I go into program some customers, I make sure
 3 that the system looks right, date and time stamps, it shows
 4 it running. We've had times that the computers have
 5 malfunctioned and we'll lose some information, and that will
 6 show up and I'll look at it and monitor it.

7 I'll monitor the system by listening to the
 8 frequencies transmitters. There's a lot of different things
 9 that can go wrong with them and you learn to tell a weak
 10 signal and a poor audio quality. Lots of different things
 11 that I check for.

12 Q And, what locations would you do this from?

13 A I can do it from my car, from my house. Can't do
 14 all the systems from my house, since I moved, but I can do
 15 them from Mr. Kay's shop, as well. I can do it from my
 16 office and computer.

17 Q Now, you testified here that you monitor your own
 18 stations and monitor some of Mr. Kay's stations. Are there
 19 stations of other licensees that you monitor?

20 A Yes, I have a couple of customers that I take care
 21 of. They are reviewed as a day long and operate a license,
 22 too.

23 Q Is this in anyway related to your functions as one
 24 that provides maintenance and repair services on a contract
 25 basis?

1 A Yes.

2 Q How is it related?

3 A Well, this is what I do. I'm in the radio
4 business, so they pay me to monitor their systems and repair
5 them, to watch out for them and make sure that they work
6 well.

7 Q Do you actually get paid to monitor the systems,
8 or do you get paid because you monitor and discover
9 something that they've done?

10 A I generally get paid for the time that I put into
11 doing any work for their system.

12 Q Now, turn now, Mr. Sobel, to transcript page 119
13 of the same exhibit. And, I want to refer your attention
14 now to line eight. Before we get into that, though, I guess
15 I want some background so we make sure that this is in the
16 proper context.

17 The 800 MHz stations that are subject to the
18 management agreement, you testified before that Mr. Kay goes
19 out and puts the customers on the system, correct?

20 A That's correct.

21 Q And, that's, in fact, one of the reasons you did
22 that was so that you didn't have to divert time to that
23 particular function, correct?

24 A Yes, that's right.

25 Q Your testimony here on page 119 says, starting at

1 line eight, "When a customer receives service on the
2 management agreement station, they sign a contract,
3 correct?" And, the answer is, "Yes." "And, that contract
4 is signed by the customer and James Kay, correct?" Answer,
5 "It's his customer, it's his contract."

6 Now, what do you mean? First of all, what do you
7 mean by it's his customer, it's his contract?

8 A Well, Mr. Kay is in the resale business, as I am.
9 I provide capacity on my repeaters for clients' radios.
10 Some of the clients are my clients directly, some of the
11 clients are other companies' clients that I just provide
12 this service for.

13 Mr. Kay, and our agreement was to help load my
14 systems with clients, and he does that as a resaler. He
15 goes out, gets the clients, signs them up on the contract,
16 to him, not to me, and he provides service on my repeaters,
17 his repeaters, other people's repeaters, etc., that he's a
18 service provider. It's not any different than the local
19 pager company, ABC Pager Company, who provides you with
20 pager service. But, then you would find out, if you ask,
21 that they don't actually own the repeaters. They go to
22 somebody else and contract for the service.

23 I do the same thing. I provide the service. He
24 contracts with the customers and he decides to put them on
25 my system.

1 Q Are you somewhat familiar with the cellular
2 industry, for example, in the Los Angeles area?

3 A Yes.

4 Q Is it your understanding that there are two
5 cellular licenses, Block A and Block B, is that the system
6 to your understanding?

7 A That's part of it, yes.

8 Q Yet, how many cellular resellers are there out
9 there?

10 A The Yellow Pages are full of companies offering
11 service.

12 Q You mentioned paging, so you subscribe to cellular
13 service, don't you?

14 A Yes, I do.

15 Q When you get a bill for monthly service from the
16 cellular carrier, do you know who it comes from? Does the
17 bill indicate who the licensee is who provides the service?

18 A No, it does not.

19 Q What does it indicate to you?

20 A It indicates the phone calls that I make, the
21 company that I'm subscribing to and that's about it.

22 Q Now, these customers that are referred to in this
23 page of the transcript, it's his contact, it's his
24 customers. I gather that you do not consider those
25 particular customers your customers for purposes of repeater

1 service, correct?

2 A No.

3 Q Even though they're being provided service through
4 your license?

5 A That is correct. We have an agreement, a
6 gentlemen's agreement -- that's an industry-wide type of
7 agreement -- that I, as a service provider, would not go
8 asking his customers or do business with his customers
9 without his knowledge. So, it's a hands off situation.

10 Q Now, you mentioned -- are you finished?

11 A It's a matter of respecting each other's business.

12 Q Okay, excuse me. I guess what I want to know is,
13 is this a standard or is this a typical process in the Los
14 Angeles land mobile industry?

15 A It's very typical.

16 Q Do you have on your UHF repeaters, for example, do
17 you have, you obviously have your own repeater customers,
18 correct?

19 A That's correct.

20 Q Do you also have dealers to whom you simply
21 provide capacity?

22 A Yeah, Mr. Kay is one of them.

23 Q Are there any others, other than Mr. Kay?

24 A Yes, a company up in Palm Dale, France Radio
25 Service, and a lot of other customers from other companies.

1 Q Now, d you have any, are these referrals of
2 customers or are they capacity that you provide to people
3 who serve their own customers?

4 A It kind of goes both ways. It depends on the
5 individual situation. Sometimes the other dealer doesn't
6 want to do the billing and keep track of it, and that's what
7 the customer will do, and I'll do the billing directly. If
8 they call and ask about fixing their radios, I'll refer them
9 back to the servicing dealer.

10 Q Are there, in the Los Angeles market, to your
11 knowledge, are there providers or dealers who provide to
12 their customers repeater service but who have no repeater
13 licenses themselves?

14 A There are quite a few.

15 Q How do they accomplish this?

16 A They find companies like myself or Mr. Kay or one
17 of the other providing companies in the area.

18 Q And, what kind of an arrangement do they make?

19 A They make all sorts of different arrangements.
20 You do this on a percentage basis. Sometimes it's one time
21 finders' fee. Sometimes they'll do a rebilling themselves
22 and they'll keep a part of it. There's all sorts of
23 different arrangements.

24 Q Now, Mr. Sobel, if you would please turn to page
25 122 of the same exhibit, for the record, got it down now,

1 it's Exhibit 328. I will get that right about the time we
2 switch to Exhibit 329.

3 Now, you've stated earlier in the line of
4 questioning that we just left, that you consider these his
5 customers, not your customers, for the purposes of repeater
6 service. There's on page 122, down about line 15, it says,
7 "Mr. Sobel, please turn to page five, paragraph eight of --"
8 I'll state for the record, what is in this proceeding WTB
9 Exhibit 340. "How many contracts were entered into with
10 customers per month on the management agreement stations in
11 1997?" And, your answer was, "I don't know. I don't keep
12 track of them that way."

13 I guess my question is, do you keep any kind of
14 track of customers on contract with the radio stations?

15 A I have a pretty good sense of what's happening,
16 because I do all the turn ons and turn offs of the systems
17 on the programming. So, I know how the system is growing or
18 shrinking by maintaining. I have access to all the
19 contracts if I want to look at them. I also set policies
20 with regard to how the contracts are done. There's a
21 specific type of structure that is used, so I'm familiar
22 with the contract process.

23 Q Now, my understanding from other testimony is most
24 of the contracts, or most of the time, there's a standard
25 rate that's charged in the industry, is that correct?

1 A That's correct.

2 Q But, you deviate from that on occasion?

3 A Occasionally. It depends on individual
4 situations. Sometimes we'll have a larger company we want
5 to provide service to, and I give them a discount.
6 Sometimes we provide special service to the company on a
7 multitude of different situations and it requires a special
8 look at.

9 Q Now, on your management agreement 800 record
10 registrations, well, actually, please turn now to page 123
11 and review the questions and answers there, starting at
12 about line five, where it says, "There have been two or
13 three occasions on which you've changed your rate that had
14 been negotiated by Mr. Kay or one of his representatives,
15 correct?" And, your answer was, "Yes."

16 First of all, I want to make sure that we're clear
17 on the record, that question and answer, this was referring
18 to 800 MHz management agreement stations licensed to you?

19 A That's correct.

20 Q So, these are the same stations where these
21 contracts are actually gone out and negotiated by Mr. Kay,
22 but the licensed station belongs to you, correct?

23 A That's correct.

24 Q Now, it then says, "On one specific occasion," and
25 I'm reading now, starting at line nine of page 122 of the

1 transcript, "On one specific occasion, you remember the
2 contract with some less materials where you and Mr. Kay
3 discussed charging one rate and you, in fact, charged them
4 more?" The answer is, "Yes." Do you remember any more
5 details regarding that situation? Can you share that with
6 us, please?

7 A Basically, they were going to have their own
8 repeater without co-channel users on that repeater, my
9 repeater, and Kay made a suggestion as to a rate, and I
10 thought that was too cheap and I raised the rate and charged
11 them the higher rate.

12 Q Why did you think the rate was too cheap?

13 A I just thought we could get more money, given the
14 situation.

15 Q And, the situation being that they were going to
16 have exclusive use of this repeater?

17 A That's correct.

18 Q So, that was a factor that enhanced the value of
19 the service to them?

20 A That's correct.

21 Q What was Mr. Kay's reaction when you stated this
22 to him?

23 A He was fine with it.

24 Q Now, you mentioned a moment ago, and I'll also
25 refer you down that same page, page 123 to line 16, where

1 you've given an answer, where you say, "Yes, I have ultimate
2 control, because I turn it off, turn on all their codes."
3 Just a moment ago, you mentioned something about you turning
4 the customers on and off. Could you describe to me what
5 that process means, turning on and off a customer?

6 A Just as with your cellular telephone or your
7 pager, the service provider must enable your equipment to
8 operate. On the repeaters, we have tone panels. We call
9 them tone panels. They're computer control devices. We can
10 either call them by telephone, some of them, or some of them
11 over the air would use like a telephone key pad on the
12 microphone and we put a special code in that accesses the
13 computer and then we give the commands to enable a specific
14 customer, and we can turn them on or off using this method.

15 And, I have all the codes and capacities and the
16 radio equipment to do that.

17 MR. KELLER: Give me one moment, Your Honor?

18 (Pause.)

19 BY MR. KELLER:

20 Q All right, I would now like to refer you, Mr.
21 Sobel, to page 125 of the transcript. On this page, there's
22 discussion regarding a \$500 option in the written management
23 agreement between you and Mr. Kay. I guess my first
24 question is, before we even get to the specifics, what is
25 your understanding of what it means to give somebody an

1 option to acquire a station?

2 A It means if and when I sell the station or want to
3 transfer it, the option is available. I should say the
4 option is there, as described. I have to follow the
5 procedures in the option.

6 Q You testified earlier this morning about an oral
7 understanding you entered into with Mr. Kay shortly after
8 you received your first authorization, correct?

9 A Yes.

10 Q Now, that later came to be replaced with a written
11 agreement, which we will discuss shortly. My question is,
12 the written agreement contains this provision that's being
13 discussed here, that gave Mr. Kay an option to acquire your
14 stations for \$500 per repeater, correct?

15 A That's right.

16 Q Do you recall what, if any, understanding you had
17 in that regard with Mr. Kay prior to the time the agreement
18 was reduced to writing?

19 A After doing all the work of getting a station and
20 operating it, if I should, for whatever reason, not want to
21 have the station anymore, it's very clear that I would go to
22 Mr. Kay and say, you know, do you want the license, do you
23 want to operate the station, and, you know, it's something
24 that I would give Mr. Kay the first shot at doing.

25 He and I have been friends for many, many years

1 and I would not just assign my license or sell my license to
2 some other party without talking to him first about it. It
3 would be silly.

4 Q Has Mr. Kay ever exercised an option as to any of
5 your stations?

6 A No.

7 Q Isn't it true that, in fact, you and Mr. Kay never
8 really followed this procedure quite the way it's written
9 here?

10 A That's correct.

11 MR. SCHAUBLE: Objection. Written where?

12 MR. KELLER: In the agreement. I'm sorry.

13 BY MR. KELLER:

14 Q Discussed here. When I said written here, I meant
15 discussed here. Refer to page 127 of the transcript,
16 please? It's also true, is it not, you testify here that in
17 one occasion, as a matter of fact, you actually received
18 more than \$20,000 for the sale of a station that was
19 negotiated between you, Mr. Kay and a third party, correct?

20 A That's correct.

21 Q Is it your understanding that if the literal terms
22 of the contract were nonetheless followed, you could have
23 been left with only \$500 in that situation?

24 A That's true. That's --

25 Q Then, how is it that this situation that's

1 described here came about, that you ended up with more than
2 \$20,000?

3 A Well, our longtime understanding was that if we
4 were to profit, if I were to profit from a station, that I
5 would split the revenues with Kay in some way that would
6 work out, and this is, what I wanted was \$20,000 from
7 selling the station, and --

8 Q Was there some reason -- I'm sorry, finish your
9 answer. I didn't mean to cut you off.

10 A And, he agreed, as well.

11 Q Is there some reason why you felt obliged to share
12 any of the proceeds in the situation with him, beyond the
13 written agreement for the \$500 option? Is there some reason
14 why you felt some sort of an obligation to share?

15 A Well, Mr. Kay put the time and effort into helping
16 me locate the frequency and helped me license it. He helps
17 load the station. He may have helped in clearing the
18 frequency of other radio companies, other clients -- excuse
19 me, he might have helped in clearing the frequency of co-
20 channel users, or he might have invested some money. It was
21 a friendly relationship and I felt it best that we share in
22 the profits of it.

23 Q Describe what you mean by when you say helped
24 clearing the channel or co-channel users?

25 A All these frequencies, when I obtained the

1 licenses, as far as I recall, had other companies also
2 licensed on the frequency in the same given geographical
3 area. And, under the FCC rules, you only could have so many
4 companies with so many radios in that area. They call it an
5 area of protection.

6 TO make the frequency more valuable to me as a
7 licensee, and obviously to Mr. Kay as someone who's going to
8 get my capacity, to move other people off the frequency is
9 of great value. But, to do that, you have to find out
10 whether or not they're in business. A lot of businesses
11 closed and the license is good for five years, and the
12 license doesn't go away just because the business closed.
13 So, you'd have to seek their cancellation of their licenses.
14 Sometimes, you have to cut them a deal, to buy their
15 equipment, to upgrade them to newer equipment or a newer
16 type of system.

17 It was a lot of work entailed in doing all of this
18 and Mr. Kay did this work. So, he was, in my mind, entitled
19 to share in the profit of it.

20 Also, he would be losing a channel capacity for
21 loading customers and customers that he might have loaded on
22 the system had to be moved to another frequency and there
23 was a cost of that, as well.

24 Q With any of your repeater stations, UHF or the 800
25 MHz licenses, do you very often sell stations?